

STATUS CONFERENCE
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:)	
)	
Application for Certification)	Docket No.
for the Hidden Hills Solar)	11-AFC-02
Electric Generating System)	
<hr/>)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, AUGUST 16, 2012
10:00 a.m.

Reported by:
Ramona Cota
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Carla Peterman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Eileen Allen, Commissioners' Technical Adviser

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

CEC STAFF PRESENT

Kerry Willis, Senior Staff Counsel

Mike Monasmith, Project Manager

Thomas Gates, Ph.D.

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Jeff Harris, Attorney
Ellison, Schneider and Harris, LLP

Clay Jensen
BrightSource Energy

Susan Strachan
Strachan Consulting, LLC

INTERVENORS

Ileene Anderson (via WebEx)
Center for Biological Diversity

Scott Smith (via WebEx)
Old Spanish Trail Association

Cindy MacDonald (via WebEx)

ALSO PRESENT

Dana Crom
County of Inyo

Jim Stroh (via WebEx)

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P R O C E E D I N G S

10:09 a.m.

PRESIDING MEMBER DOUGLAS: Good morning everyone.

Welcome to the status conference for the Hidden Hills Solar Energy Generating Systems Project. My name is Commissioner Karen Douglas; I am the Presiding Member of this Siting Committee. To the far left on the podium, my left, Commissioner Peterman. To my immediate left is our Hearing Officer Ken Celli. To my right, my immediate right, is Galen Lemei, my advisor, and to his right, Jennifer Nelson, also my advisor. We are being joined now by Eileen Allen, she is the technical advisor for siting for the Commissioners. And I believe that Sául Gómez --

ASSOCIATE MEMBER PETERMAN: No one else will be joining us.

PRESIDING MEMBER DOUGLAS: No one else will be joining us, okay. So that's who we have behind the dais.

Let me ask now for the parties to introduce themselves, beginning with the applicant.

MR. HARRIS: Good morning. This is Jeff Harris, here on behalf of the applicant.

MR. JENSEN: Clay Jensen, project manager with BrightSource Energy.

MS. STRACHAN: Susan Strachan, permitting consultant, I'm with Strachan Consulting.

1 PRESIDING MEMBER DOUGLAS: Thank you. And staff?

2 MS. WILLIS: Good morning. My name is Kerry
3 Willis, I'm senior staff counsel. And with me is Mike
4 Monasmith who is the project manager.

5 PRESIDING MEMBER DOUGLAS: Thank you. Let's see.
6 Let's go on to the parties, the intervenors. Jon
7 Zellhoefer, are you on the line?

8 (No response.)

9 PRESIDING MEMBER DOUGLAS: Lisa Belenky or Ileene
10 Anderson from Center for Biological Diversity?

11 MS. ANDERSON: Good morning. This is Ileene
12 Anderson on the phone but I am going to sign on to WebEx
13 momentarily.

14 PRESIDING MEMBER DOUGLAS: Okay, thank you.
15 Jack Prichett from the Old Spanish Trail
16 Association?

17 MR. SMITH: I am Scott Smith in place of Jack with
18 OSTA.

19 PRESIDING MEMBER DOUGLAS: Thank you.
20 And Cindy MacDonald, are you on the line?

21 MS. MacDONALD: Yes, I'm on the line on the phone.
22 Good morning.

23 PRESIDING MEMBER DOUGLAS: Good morning, thank
24 you.

25 I see we've got Inyo County.

1 MS. CROM: Dana Crom, Deputy County Counsel, on
2 behalf of Inyo County.

3 PRESIDING MEMBER DOUGLAS: Thank you. Do we have
4 other representatives of public agencies here in the room?

5 (No response.)

6 PRESIDING MEMBER DOUGLAS: What about on the
7 phone?

8 (No response.)

9 PRESIDING MEMBER DOUGLAS: No, it doesn't sound
10 like it.

11 And our Public Adviser Jennifer Jennings is here
12 in the room so thank you, Jennifer.

13 And with that I will turn this over to the Hearing
14 Officer.

15 HEARING OFFICER CELLI: Thank you. Good morning,
16 Commissioners, good morning, everyone. Here is a little
17 background.

18 The status conference on the proposed Hidden Hills
19 Solar Energy Generating System was scheduled in a notice
20 dated April 18th, 2012.

21 The purpose of today's conference is to hear from
22 the parties regarding the status of the Hidden Hills Solar
23 Energy Generation System's Application for Certification,
24 which we will be referring to as an AFC throughout these
25 proceedings, and to help resolve any procedural issues as

1 well as to assess the scheduling of future events in this
2 proceeding.

3 The way we will proceed is -- first of all I want
4 to acknowledge that this is our last scheduled status
5 conference. If we need more we can do more but I just
6 wanted to acknowledge we don't have any more scheduled.

7 Since we are coming close to the time for an FSA
8 to publish I thought we would hear first from staff rather
9 than applicant, who would then summarize their view of the
10 case status and scheduling, followed by the applicant,
11 followed by Intervenor Zellhoefer if Jon Zellhoefer comes on
12 the phone. I don't think Mr. Zellhoefer has participated in
13 the last, say, like two status conferences. That doesn't
14 mean anything, he doesn't have to, but I just thought I
15 would acknowledge that. Center for Biological Diversity, we
16 have Ileene Anderson today. The Old Spanish Trail
17 Association would follow the CBD, that would be Scott Smith
18 today, and finally Cindy MacDonald who is our last
19 intervenor.

20 We will then provide an opportunity for general
21 public comment after the status conference this morning.

22 In terms of background: the staff published a PSA,
23 which is a Preliminary Staff Assessment, on May 24, 2012 and
24 a Supplemental Staff Assessment, which was simply the
25 Cultural section of the PSA, on June 15th, 2012.

1 Staff combined its PSA and SSA comment periods and
2 extended them to July 23rd, 2012. date.

3 At the last status conference, which we held on
4 July 9th, 2012, the parties indicated that the remaining
5 what we are calling "unresolved subject areas" were
6 Biological Resources, Cultural Resources, Land Use,
7 Socioeconomics, Visual, Water Supply, Worker Safety and Fire
8 Protection, Soils and Surface Drainage or Surface Water,
9 Transmission Systems Engineering, Alternatives and Growth-
10 Inducing Impacts. Which general Growth-Inducing Impacts
11 used to be part of Socioeconomics but maybe you can explain
12 later why it needs to be separate. Perhaps it's a bigger
13 deal in this case.

14 The Committee would like to hear from all of the
15 parties regarding the schedule. I passed out a schedule.
16 And one of the things I am going to do right now on WebEx is
17 put up the schedule that we sent. I sent an email to
18 everybody I think yesterday with this proposed schedule.
19 This isn't etched in stone, it's just something we're going
20 to be working off of today.

21 We'd also like to hear about whether unmitigable
22 impacts that staff declared as unmitigable in Traffic, Land
23 use, Cultural Resources and Visual Resources remain
24 unchanged as well as the status of those previously
25 designated unresolved matters.

1 Two quick last points before we begin. I want to
2 acknowledge that we have Dana Crom here in the room from
3 Inyo County. We didn't receive and review the resolution
4 passed by the Inyo County Board of Supervisors so the
5 Committee today would be interested in whether all the
6 issues contained in Land Use such as merging of parcels,
7 setback, easements, public roads zoning and General Plan
8 compliance have been resolved or where they're at.

9 The Committee also reviewed the comments on the
10 PSA that were docketed, which were numerous, and would like
11 to hear from parties regarding resolution of any of the --
12 there were Native American cultural issues, there's the Old
13 Spanish Trail's issues, there's various comments addressing
14 water supply in particular. We don't really have to rehash.

15 The comments were read and will be considered and will be
16 part of the FSA, I assume.

17 Finally, I have provided, given you the draft
18 schedule, which you all have. The draft schedule is now up
19 on the WebEx. I'm going to try to do a better job of
20 centering that so that you can actually read it.

21 Ari, I tried to bring that up and it didn't change
22 its position. Can I affect that over here or do I have to
23 have you do that? Because on mine at least, on my computer
24 you can see the whole schedule, all the way down to Final
25 Adoption. You know what, I don't need that title up there.

1 If you can scroll it up so that -- yeah, that's better.

2 There you go. Perfect, thank you. Okay.

3 So the Committee is interested in everyone's
4 comments on the schedule. A finalized schedule will be
5 incorporated in a Notice of Prehearing Conference and
6 Evidentiary Hearing.

7 So first let's hear from staff this morning
8 regarding the FSA and the schedule, please.

9 MS. WILLIS: Thank you. Good morning again, this
10 is Kerry Willis, senior staff counsel.

11 Staff has been working diligently and is on
12 schedule for completing the FSA on the scheduled date of
13 9/11.

14 The only discrete issue that may lag behind is the
15 issue of avian impacts from the solar flux from the towers.

16 A workshop was scheduled for August 8th and was cancelled
17 by the applicant and I have learned this week that it's been
18 rescheduled for August 28th. Now, in order for us to meet
19 the September 11th due date the biologist would have to have
20 their Biological Resources section in to management for
21 review on August 29th. So that would not give her enough
22 time to incorporate any new information or any resolutions
23 of issues that would result from the workshop. So that
24 issue, that could possibly lag behind a considerable amount
25 of time.

1 I don't know if you would like me to respond to
2 the letter that was filed by Mr. Harris yesterday?

3 HEARING OFFICER CELLI: Yes, please. For the
4 record, I think we should just say for the benefit of anyone
5 on the phone that we received a letter yesterday from
6 Ellison, Schneider, which is Jeff Harris' firm, indicating
7 that they would recommend an October 19th, 2012 publication
8 date, so that's what we're talking about. Go ahead.

9 MS. WILLIS: While we are not requesting any
10 additional time I don't believe that staff would be opposed
11 to more time. The extra time could be used to have
12 additional workshops to work out issues that are still,
13 still remain, such as desert tortoise mitigation, as I said,
14 solar flux, cultural and visual mitigation.

15 The applicant and the county would have more time
16 to come to agreements on point-of-sale issues, public road
17 abandonment and general plan overlay.

18 Also we would expect -- we've been -- we were told
19 quite a -- at one of the workshops that there could be an
20 agreement with the Southern Inyo Fire District and the
21 applicant and we have yet to see any more information on
22 that.

23 Also the county has indicated that in order for
24 their process to proceed they would need a complete FSA so
25 that would be an issue to take into consideration.

1 In Mr. Harris' letter he comments that the staff
2 has received a large volume of comments. As indicated here,
3 it is true. Probably 800, 900 pages worth of comments.
4 Mr. Monasmith has done an extraordinary job of culling the
5 comments, through the comments and marking each and every
6 comment and organizing them by technical discipline so that
7 the staff can have the opportunity to provide comments. I'd
8 like for him to describe the process.

9 HEARING OFFICER CELLI: Thank you, Ms. Willis.
10 And also I just want to acknowledge that we received a
11 Hidden Hills SEGS Response to Comments Matrix. There is a
12 stack of these in the foyer at the front door and I am about
13 to put it up on the WebEx so people remotely can see it.

14 MR. MONASMITH: Thank you, Hearing Officer Celli;
15 Mike Monasmith, project manager.

16 The response to comments really started primarily
17 because of, initially anyway, Intervenor MacDonald, who has
18 filed extensive comments. And actually previous to PSA
19 comments has submitted a number of documents and filings,
20 first as a member of the public and then subsequently
21 following intervenorship.

22 As was indicated in a previous status conference,
23 we committed to tracking those comments, providing a full
24 accounting of those. And the decision following the PSA
25 comments we received July 23rd, the sheer volume of them, we

1 felt it was necessary and appropriate, despite the large
2 amount of work it required, to put together a matrix that
3 would follow each of the 22 technical disciplines. Provide
4 a matrix for each one of those that would be couched in the
5 Response to Comments section and then provide those for all
6 parties. Not just the public and the agency comments, which
7 we would always traditionally respond to, but those of
8 parties, intervenors and the applicant as well.

9 And so we have started that process. We started
10 it early. We have been working on it diligently. As Staff
11 Counsel Willis indicated earlier we are on track to complete
12 our comments by the pledged date of September 11, which we
13 had given the Committee when it was decided to move the FSA
14 publication date back initially from August 1st to September
15 11th. We are on track.

16 Obviously for the reasons that Kerry indicated
17 earlier we would not be opposed to additional time.
18 Certainly the responses that we are providing could be
19 buffeted and augmented and we will continue to work on those
20 regardless of an extension and have those in the final
21 document we publish, either September 11th or a subsequent
22 date if one is decided.

23 HEARING OFFICER CELLI: Thank you.

24 PRESIDING MEMBER DOUGLAS: I just wanted to say I
25 appreciate the work that you're going to to make sure that

1 the comments are carefully tracked and cataloged and
2 responded to, I think that's very helpful.

3 (Hearing Officer conferring.)

4 HEARING OFFICER CELLI: I'm sorry, Ms. Willis, go
5 ahead.

6 MS. WILLIS: I was just going to add, I know you
7 had requested information on unmitigable impacts and areas
8 that were probably unresolved from the PSA. I think at this
9 point it's probably a little premature for us to make any
10 comment on that. We have just received some of the first
11 few FSA sections to review so I don't really have more
12 information on what areas. But like I said, we're certainly
13 open to having workshops on areas and maybe even putting out
14 our proposed changes to certain conditions that were
15 probably some of the ones the applicant had the biggest
16 concerns about.

17 HEARING OFFICER CELLI: Once in a while you come
18 into a status conference and someone says "we have resolved
19 Visual" or something and so that's kind of what we wanted to
20 hear about, if there is anything like that. But if not, so
21 be it.

22 MS. WILLIS: Thank you.

23 HEARING OFFICER CELLI: Anything further from the
24 staff?

25 MS. WILLIS: No, thank you.

1 HEARING OFFICER CELLI: Okay, let's hear from
2 applicant, please.

3 MR. HARRIS: Good morning, Jeff Harris on behalf
4 of the applicant. Thank you for the opportunity to be here
5 at the status conference. I'll say again how much we
6 appreciate this opportunity to be before you; it's a very
7 positive part of the process.

8 Let me just kind of walk through sort of our
9 thoughts and then we can try to figure out exactly where
10 things are headed here.

11 The PSA comments were received the 23rd. The
12 parties filed about, as I recall, about 900 pages of
13 comments. And that's all parties, not just the applicant.
14 I see from Mr. Monasmith's chart that's 1371 individual
15 comments. And congratulations to Mike for taking on that
16 task. I don't know who he made mad but he obviously made
17 somebody mad so he got to do that. So nice work, Mike, I
18 appreciate that.

19 And I appreciate the Commissioners' comments about
20 the staff's diligence here. We believe staff is working
21 hard, every indication of that is staff is working hard and
22 we believe they're working in good faith. I want to be real
23 clear about that.

24 Our concern, as reflected in our letter which we
25 filed yesterday, is quite simply there is a difference

1 between noting the comments and actually fundamentally being
2 able to respond to them and incorporate those responses into
3 the document. And what I didn't quite hear as clearly that
4 I thought maybe I would from the staff is that except for
5 the avian issues, that their position is now that they are
6 able to do both those things, identify the issues and
7 respond to them in the document. And doing both of those is
8 really important. And the entire reason for the letter was
9 to deal with that second issue, will there be adequate time
10 to actually respond to those comments?

11 And taken outside of the realm of this particular
12 proceeding, I have been involved in other proceedings where
13 when push comes to shove on time, essentially the PSA
14 becomes the FSA. And I am not suggesting that that's going
15 to happen here but that's the concern that we have more than
16 anything else. There are some very serious comments from
17 the applicant and from other parties.

18 And just putting together the matrix is a
19 herculean task and again Mr. Monasmith should be applauded
20 for doing that. But at the end of the day the reason for
21 those comments was that gives staff the opportunity to
22 hopefully incorporate into their final document the
23 substantive issues that have been identified in those
24 comments.

25 And so, you know, we really did send the letter

1 yesterday. And I feel a little bit like I've fallen through
2 the looking glass here. I was reading Lewis Carroll
3 comments yesterday just to kind of put myself in the frame
4 of mind for this hearing. But here I sit as the applicant's
5 attorney suggesting to you that, that maybe a later date for
6 a staff document is, is a good thing. And that is a first I
7 am sure, Commissioner.

8 So why is that? Why are we here today in this
9 sort of utopian environment? It really is simply that, you
10 know. There are some very substantive issues that were in
11 our comments alone; the other parties' comments as well.
12 I'm not suggesting just the applicant has good ideas here
13 but very substantive comments.

14 It's important that the Commission as a whole have
15 a very strong document. That guides the entire process
16 going forward. It shapes the trajectory of the evidentiary
17 hearings, it shapes the trajectory of the final decision.
18 And we understand staff's recommendations are just that,
19 they are recommendations and you are the decision-makers but
20 they are important recommendations and they always have
21 been. It's part of the history and culture and tradition of
22 this institution.

23 So we really do want to avoid a situation where we
24 just leave staff with not enough time to, you know, convert
25 that PSA into an FSA that actually catalogs the comments and

1 substantively -- secondly, substantively responds to those
2 comments. So that's our thought in terms of the request for
3 additional time.

4 I am not surprised to hear that staff would be
5 happy to have more time. We are back out of the looking
6 glass. That's the expected result. And I think I'd feel
7 the same way if I were in their position, you know. I get
8 more time on a document it typically gets better. Not
9 always, sometimes I screw it up. But typically with more
10 time you're able to do a better job with those documents so
11 I understand that issue.

12 There are certain other issues though and I'm
13 going to describe those as threshold legal issues. There
14 are certain threshold legal issues that will not resolve
15 with more time. And we could wait until we have flying cars
16 like they promised us when we were kids, and we still don't
17 have, for those issues to be resolved. I don't, I don't
18 think additional time is going to help resolve those issues.

19 And again, they are legal issues. And I say
20 they're threshold legal issues in the sense that they are
21 issues that can be resolved without the factual evidentiary
22 record in this proceeding. There are things that go to the
23 nature and the scope of the Commission's jurisdiction. They
24 go to the nature and the scope of the application of CEQA
25 more than anything else, to the project. And as we've

1 described it in the past, this project's location is sort of
2 a law school exam. It's sort of perfect. There are state
3 issues, there's federal issues, it's right on the
4 California/Nevada border, all kinds of fun stuff.

5 But those are legal issues and they go to shape
6 the scope of the staff's analysis. And as we have made
7 clear in our comments, we feel in certain areas the analysis
8 is overly broad. And what that does is it results in a
9 document that's 1200 pages as opposed to a document that is
10 a more reasonable size. It results in an environment where
11 other parties are going to look around and say, I guess we
12 have to address those issues too in Nevada or those issues
13 related to "no project" or those issues related to
14 Confidential Appendix A to the Cultural Resources section.

15 So we really have something, I think, that shapes
16 the nature and the scope of the evidentiary proceedings for
17 all parties. And again, with more time I don't think these
18 issues are necessarily resolved.

19 The applicant has the burden, as we have all been
20 reminded several times, of making the case for the
21 application and for its approval. And part of that burden
22 is knowing exactly where the bar is. You know, what is the
23 appropriate scope of the legal issues that are relevant to
24 the decision the Commission must make in this proceeding.
25 And I always kind of come back when we talk in our offices

1 about whether something is relevant or not, we always say,
2 relevant to any decision the Commission must make on this
3 application. And that's really what we're talking about
4 here in these threshold legal issues is are there things
5 that we ought to be talking about moving forward?

6 That all leads us to the conclusion that we would
7 probably -- I think we are going to be looking at filing
8 what I'll call a limited motion. And I mean limited in
9 terms of its scope. If we wrote the 150 page brief that I'd
10 get paid to write, my client wouldn't be happy with paying
11 me and you wouldn't be happy reading it. So we are going to
12 make it very focused. Focus on a few issues moving forward.

13 Candidly, we are still deciding which issues are
14 important enough for your time and which ones are better
15 resolved maybe down the road. But we think the idea of a
16 limited motion by the applicant is a very good idea that is
17 going to allow us to fundamentally, I guess, put on the
18 table what we think the proper view of the nature and the
19 scope of the Commission's environmental analysis ought to be
20 on the proper nature of the, of the CEQA analysis moving
21 forward. And if we are able to do that in a time frame, on
22 a briefing schedule or a motion or some other procedural
23 vehicle that holds your schedule that would be a win-win,
24 obviously. Which is part of the reason we have an incentive
25 to make that motion more limited.

1 I don't want to spend a whole lot of time going
2 into substantive legal issues but I guess I want to give you
3 a flavor of just a couple -- of three types of issues we're
4 thinking about in this limited motion on threshold legal
5 issues.

6 The first one is the Cultural Appendix A. And I
7 understand from talking to Ms. Willis yesterday that staff
8 may have some new information on that and we are going to
9 hear that down the road. But as we sit here today we have a
10 Cultural Resources section that very much depends upon a
11 confidential Appendix A that doesn't protect just the
12 location of the sites. The public policy behind the
13 confidentiality on those resource issues, paleo and
14 cultural, is to protect the sites from vandalism and other
15 types of activities. What we have in the FSA are actual
16 maps showing the ethnographic resources, where they are.
17 Figures 1, 2 and 3 I think showed those resources so there's
18 obviously something more in that document.

19 We think that's a threshold issue that really
20 needs to be resolved by the Commission. Maybe we'll hear
21 more about that today. Because it shapes the whole
22 discussion of the Cultural Resources section. What's in
23 that document.

24 And even before I see that document I have a
25 foundational question as to resources located in Nevada and

1 in Arizona and in -- Utah, thank you. Are those even
2 relevant to an analysis that's performed pursuant to the --
3 to CEQA? Which the C in CEQA, as we all know, is
4 California, the California Environmental Quality Act.

5 I've said in the past, I'm not sure I need to see
6 that document. And what I was alluding to there is just
7 that very thing. Are those multi-state issues even relevant
8 to a decision that this Commission must make under the
9 California Environmental Quality Act? Are they even
10 historic resources as defined by California law and are they
11 eligible for listing on the California Register of
12 Historical Resources?

13 Those to me are threshold issues that are very
14 important for this Commission to decide right away. They
15 shape how big the document is going to be, they shape what
16 the staff's testimony is going to look like. They shape our
17 testimony. They shape the evidentiary hearings and whether
18 those are two hours of hearings or two days. They're a big
19 deal. And I think no matter how much time staff does or
20 doesn't take to put out the FSA they're probably the kind of
21 things that are not resolvable based upon staff looking at
22 our comments and saying "the applicant is cracked, we ought
23 to change the analysis." So that's one example. I promised
24 to be brief and I've already violated that but just a couple
25 more real quickly.

1 HEARING OFFICER CELLI: So far I have two issues
2 there, confidentiality and this jurisdictional issue.

3 MR. HARRIS: Correct, yes, I think that's right.
4 and we owe you a better formulation of those issues. And as
5 I said candidly, we're still kind of formulating them
6 ourselves and wanting to make things as limited as possible.

7 Another sort of straight-up legal issue -- and we
8 did raise all these issues in our comments I think it's fair
9 to say. But it deals with the alternatives analysis and the
10 basic objectives of the project. That to me is a legal
11 question. The section of the AFC the lawyers always review
12 and the in-house lawyers review for the counsel at the
13 Commission is Alternatives because those are legal
14 questions. And we feel there's a very fundamental flaw in
15 the current analysis that staff may be correcting but that
16 has to deal with framing the analysis based upon the
17 applicant's basic project objectives. And that's really the
18 disagreement as I see it between staff and applicant.

19 I concede that the applicant's framing of the
20 basic objectives -- the agency has to make an independent
21 judgment upon those things but there are bounds on that
22 judgment. And the staff I think in this case, and we've
23 briefed this issue kind of internally legally, has exceeded
24 those bounds. It really does come down to framing it up
25 around the applicant's basic objectives.

1 And this is an unfair characterization but to make
2 the point, essentially what staff has done is converted the
3 objective of building a solar tower of power technology with
4 the generic objective of providing renewable energy. And
5 those are not the same. This company is here before you
6 today with an application for a specific technology and
7 furtherance of a specific Power Purchase Agreement.

8 And to convert that basic objective into "anything
9 that is renewable is okay" is not okay according to CEQA and
10 we think that's a threshold issue. And the reason that
11 matters then, because virtually any technology that we have
12 no interest in pursuing becomes, you know, within the
13 reasonable range of feasible alternatives. So that's an
14 important legal issue that we think --

15 MS. WILLIS: Mr. Celli, I need to object to the --
16 Mr. Harris is making his arguments once again. That
17 happened at the last status conference. And I thought we
18 are really here to, you know, get updated on procedural
19 issues. And he's gotten into substance, clearly, in the
20 Alternatives section that really -- it hasn't been written
21 yet. I mean, we're waiting for the Final Staff Assessment.
22 I haven't reviewed it so I can't even say how it's -- where
23 it's going, for him to be arguing about something that's
24 actually not published yet.

25 HEARING OFFICER CELLI: Right. And just let's

1 take a step back for a moment. This is a status conference,
2 everybody, so we are not taking evidence and we are not
3 listening necessarily to argument per se. We're really here
4 to find out how the parties are progressing, what is going
5 on in the Hidden Hills matter. We are way short -- well not
6 way short but we are short of a prehearing conference and
7 evidentiary hearings.

8 But this is useful information and this is
9 informative. It sounds to me like where Mr. Harris is going
10 with this is he talked about a limited motion on sort of
11 these threshold jurisdictional legal questions. Or not just
12 jurisdictional legal questions because there's this
13 confidentiality thing and now there's a -- I'm going to
14 couch it as the scope of alternatives issue. So he's giving
15 us sort of the sense of it.

16 I guess, you know, if you could limit it down that
17 would be helpful. But I just want to say that this is
18 useful because if we know that there is a motion coming we
19 can kind of limit it and we can pretty much tell the parties
20 what we need briefed and that sort of thing.

21 PRESIDING MEMBER DOUGLAS: You know, I am just
22 going to add. Certainly on committees on which I have
23 served I have not been shy about asking for briefing ahead
24 of time where that briefing has been, in our view, useful.
25 But I would appreciate it if rather than making arguments

1 you just described or listed the issues that you're
2 considering asking for briefing on.

3 MR. HARRIS: And thank you. I promise not to
4 watch Inherit the Wind again anytime soon. Yes, I will be
5 -- I will be brief then.

6 The jurisdictional questions, Mr. Celli, there are
7 really two nuances to that and then I'm going to stop. The
8 first one is whether under CEQA you look at the project
9 features located in another state. So the transmission line
10 and the gas line is located in Nevada. Are those features
11 that ought to be analyzed in the CEQA document? And our
12 view on that is "no" and we can explain why. The other
13 nuance on that is the question of whether you ought to be
14 looking at the project's effects in another state. And
15 again, we will brief those issues.

16 So I'm going to guess I'll stop there and put us
17 back on track to say, you know, we want to make it a limited
18 motion. We want to basically give you what we think are
19 threshold issues, threshold legal issues to move this thing
20 forward. We are perfectly amenable to doing that on the
21 schedule that's been put out there if that can be arranged.

22 We are just very interested in sort of hearing
23 definitively from staff whether they thing by the 11th,
24 except for the avian issues, that they can both categorize
25 the comments and respond to them.

1 I think I am going to go ahead and acknowledge my
2 worn out welcome and stop.

3 HEARING OFFICER CELLI: Thank you for your
4 comments and thanks for the heads-up on this motion. I just
5 want to raise a couple of things about this so we can have
6 some sense of where to go.

7 It seems to me that the jurisdictional question,
8 what -- I mean, that's straightforward, that's just a matter
9 of briefing. That's a legal brief. How far do we have to
10 go with the CEQA analysis into Nevada and points beyond is
11 something I think the parties can brief pretty clearly.

12 And Mr. Harris, you acknowledge that there's sort
13 of this, there's the direct language of CEQA that talks
14 about, okay, it ends at the border but then there's also the
15 effects. I'm sure you will brief all of that.

16 I was looking into confidentiality on my own
17 anyway because I have concerns. There has been discussion
18 about confidentiality and I have some concerns with regard
19 to how to handle confidential information as we get to the
20 hearing.

21 MS. WILLIS: Could I --

22 HEARING OFFICER CELLI: Ms. Willis, go ahead.

23 MS. WILLIS: Could I address the Cultural
24 Appendix?

25 HEARING OFFICER CELLI: Oh yes, please.

1 MS. WILLIS: Is it appropriate?

2 HEARING OFFICER CELLI: Yeah, and tell us what it
3 is and --

4 MS. WILLIS: Okay. I have reviewed it and it has
5 been docketed so it's kind of a moot issue as far as that
6 goes. It was a -- it was a -- some of the information was
7 based on information and discussion that was gathered from
8 our Cultural Resources expert Mr. Tom Gates, Dr. Gates, who
9 had a confidential relationship with the tribes. They would
10 no respond to him and give him information without him
11 signing a confidential agreement.

12 HEARING OFFICER CELLI: I just want to be clear.
13 The PSA contained a Cultural section. Actually what we call
14 the SSA was the Cultural section. And attached to the SSA
15 was Appendix A, right?

16 MS. WILLIS: Well it wasn't attached because I
17 think it was confidential at the time.

18 HEARING OFFICER CELLI: Okay. So there was some
19 mention of an Appendix A that was confidential. So nobody
20 has seen Appendix A.

21 MS. WILLIS: Well it's been docketed.

22 HEARING OFFICER CELLI: And when was it docketed?

23 MS. WILLIS: Yesterday, I believe.

24 MR. MONASMITH: This morning. It was sent to
25 dockets this morning so we will have it published and up on

1 the Web. We are also going to proof of service it so all
2 parties will be served with it so we'll go beyond just
3 docketing it. But it will be up on the Web for everyone to
4 see this afternoon.

5 HEARING OFFICER CELLI: Okay, great.

6 MR. HARRIS: Can I ask for clarification? Is hat
7 the entire document or is it a redacted --

8 MS. WILLIS: May I finish? I still -- sorry.

9 HEARING OFFICER CELLI: The question from
10 Mr. Harris was, is it a redacted document.

11 MS. WILLIS: That's what I was trying to get to,
12 that was my next sentence. It is redacted. It's not
13 heavily redacted. I would say it's probably -- it's just
14 some words here and there, some phrasing. And I've looked
15 at what is redacted and from my opinion I don't think it
16 impacts the, you know, the value of the document as a whole.

17 The information was -- it was shown back to the
18 tribe to find out if that was okay to reveal the information
19 that is being revealed and they were, they were satisfied
20 that, that the limited amount of redaction was okay.

21 We believe that the document is, you know, fairly
22 complete. There isn't really anything redacted that is
23 going to make any difference on the Cultural section.

24 HEARING OFFICER CELLI: Can you give me a little
25 more description? In other words, I have been through

1 Cultural once. You know, it's a big document so I don't
2 have total recall. I don't even remember -- I kind of
3 remember a mention of Appendix A. I don't remember seeing
4 Appendix A, obviously, it wasn't attached. But what I
5 wanted to ask is, what was the purpose of Appendix A? Is
6 this just a listing of sites and artifacts or is this a
7 further discussion of some discrete area or what? What is
8 Appendix A?

9 MS. WILLIS: It's more of a discussion on the
10 ethnographic issues. There are stories, information that's
11 given that were told by members of the tribe and shared with
12 Mr. Gates that would, that would give him more information
13 about the importance of the area.

14 HEARING OFFICER CELLI: That's tribes'
15 ethnographic discussion of the site?

16 MS. WILLIS: I'll have Dr. Gates discuss it a
17 little bit more. I think he is better --

18 DR. GATES: Good morning. My name is Thomas
19 Gates, I am an anthropologist and was hired because of my
20 expertise, partly with tribal governments.

21 The specific question you're asking about what is
22 ethnographic, what is that as a resource? I would simply --

23 HEARING OFFICER CELLI: No, actually my specific
24 question is what is in Appendix A?

25 DR. GATES: Appendix A is ethnographic information

1 gathered from primarily the Pahrump Paiute tribe.

2 HEARING OFFICER CELLI: And this is in the form of
3 standard -- this isn't a table, per se, it's just written
4 text, paragraphs?

5 DR. GATES: The document itself would be a
6 combination of narrative, maps and tables.

7 HEARING OFFICER CELLI: Okay.

8 DR. GATES: There's also some historic
9 photographs.

10 HEARING OFFICER CELLI: Do you have -- can you
11 give us a percentage? What percentage do you think, of this
12 document, has been redacted?

13 DR. GATES: Two percent.

14 HEARING OFFICER CELLI: Okay. And how many pages
15 is Appendix A?

16 DR. GATES: The total is -- with the photographs,
17 which are 27 photographs or 27 pages of photographs. But
18 the text itself is 103 pages.

19 HEARING OFFICER CELLI: Okay. And the nature of
20 the things that are -- I take it somebody went through with
21 a black marker and crossed out.

22 DR. GATES: I did.

23 HEARING OFFICER CELLI: Okay.

24 DR. GATES: In collaboration with the tribal
25 government that provided the information originally.

1 HEARING OFFICER CELLI: Okay. That's really all
2 the information we need at this point.

3 DR. GATES: Thank you.

4 HEARING OFFICER CELLI: So thank you very much.

5 What's likely to happen, unless the parties can
6 work out something and come up to some agreed upon
7 disposition with regard to the confidentiality, is when we
8 put together the Notice of Prehearing Conference and
9 Evidentiary Hearing and probably the Hearing Order we are
10 going to ask in addition to the parties identifying what
11 their exhibits are, to identify those exhibits that they're
12 claiming or that need designation as confidential, okay?

13 What would then probably happen is we will have
14 some sort of -- well, before I even get to this let me just
15 say that oftentimes in the past when confidential issues
16 have come up the parties have actually looked at it
17 objectively and said, do we really need this? Is this
18 really important? Does this really make that much of a
19 difference one way or the other. And so many times it
20 doesn't that we are able to escape the whole problem of
21 confidentiality.

22 And that would be, in the Committee's view, the
23 best of all possible scenarios. Because there's a
24 presumption in favor of an open and a public record and we
25 want that. We want to preserve that to the extent that we

1 can. And the Committee -- so the proponents of confidential
2 information, in this case staff, there may be other things,
3 have the burden of showing up why it needs to remain
4 confidential.

5 And we are going to do a balancing test
6 essentially between, you know, the harm that would come from
7 disclosure versus the necessity for the privacy of the
8 information, of the confidentiality. And that would
9 probably be accomplished in an in camera hearing and then we
10 would make some determinations as to what comes in and what
11 isn't and then let the parties decide whether it's that
12 important to them or not.

13 But I'm encouraging the parties. I know you said
14 you have an August 28th workshop coming up. That would be
15 the time to have those discussions with all of the parties.

16 I understand that we are bound by statute. There
17 are certain things that absolutely have to be confidential,
18 no problem there. But some things I am not sure about.
19 Maybe this requires further briefing.

20 And in fact, as long as we are talking about
21 briefings and motions, this is something we are going to
22 want to know about, which is how is it that an above-ground
23 trail that everybody seems to know about, if that's
24 something that is going to be -- if you are going to request
25 confidentiality with regard to the trail.

1 Because I did see something regarding the -- I
2 think it came from the Old Spanish Trail Association, a
3 request for Mule Trace to be confidential. I don't
4 understand that. We'll probably need to see a briefing on
5 that. So I just want to be clear with everybody that the
6 presumption favors open record and disclosure of information
7 and public viewing.

8 So far we have talked about the issue of, again, I
9 think it's strictly legal, strictly a legal issue, what goes
10 beyond -- you know, what needs to be analyzed beyond state
11 borders.

12 This confidentiality, that might be a fact-based
13 issue that could be matter by matter, you know, item by
14 item, evidence by evidence.

15 The Alternatives, now we're getting into that gray
16 area. Sometimes you need to hear what the evidence is. By
17 the same token, I hate to go into an evidentiary hearing
18 with some unresolved legal issue that if we could have
19 resolved it up front could have saved us a lot of time or
20 not caught somebody unawares, scrambling to make up for lost
21 time because they didn't realize that something was needed
22 in their analysis.

23 MS. WILLIS: May I address that?

24 HEARING OFFICER CELLI: Please.

25 MS. WILLIS: Actually during our -- what date was

1 that, the workshop? The workshop that we had here July 2nd.
2 The applicant did discuss their, their legal issues quite
3 consistently throughout the workshop so we are aware and it
4 is also presented in their comments so it's not something
5 that we aren't considering.

6 HEARING OFFICER CELLI: It sounds like there's an
7 impasse, though, otherwise it --

8 MS. WILLIS: We do believe it's also factual-based
9 if you look at the actual objectives that they've included.
10 So once you get into that then you have to look to the
11 objectives themselves and say, are they too narrow, are
12 they, you know. And that, and that becomes more of a
13 factual issue that we believe is premature to be briefing,
14 personally. I mean, it's just too early.

15 HEARING OFFICER CELLI: You know what will happen
16 is we'll get a motion, we'll hear what the motion is. You
17 can respond to the motion. The parties will brief it and
18 then, you know, part of the risk that the applicant is going
19 to run here is that the response from the Committee on
20 something would be that this is just too factual, it's
21 premature or whatever. We'll look at it, we'll figure it
22 out and do the best we can. Obviously the whole point of
23 this is to try to move things forward and advance to
24 hearings in as organized way as we can and really reduce
25 issues where we could where that's available.

1 So my sense is there's three issues. There's this
2 Alternatives, there's the Nevada/California border question
3 and there's the confidentiality of the redacted Appendix A.

4 And any other -- I'm really interested in this
5 confidentiality stuff. I would really like to clear that
6 out up-front if we can. It would be good to know that.

7 Anything further on that, Mr. Harris?

8 MR. HARRIS: At the risk of being accused of
9 arguing the merits just briefly. On the confidentiality
10 thing I think you're correct. The law provides for certain
11 things to be protected, sites from vandalism, and nothing
12 else. So I think the redacted document may go a long way
13 towards narrowing the issues here but I don't think that it
14 resolves them necessarily.

15 As to the Alternatives issues too, I think that we
16 hear that they can't be too narrow. I think that's contrary
17 to the law too but I'll brief these issues.

18 HEARING OFFICER CELLI: And you know, you may very
19 well find that the newly-filed Appendix A is fine and moots
20 the whole problem anyway so we'll see. We're relying on
21 you, really. That's your motion to bring and we'll have the
22 parties respond to the motion.

23 MS. WILLIS: And it is possible we -- the
24 discussion I was having with Dr. Gates is to see if there
25 was a possibility of having a view by the applicant's

1 cultural resource specialist of the redacted -- the
2 unredacted portions of the document. We'll be discussing
3 that as a possibility as well.

4 HEARING OFFICER CELLI: All right. That's --

5 MS. WILLIS: If they are -- it is very -- from my
6 view it's very minor, you know, little words here and there
7 type of thing.

8 HEARING OFFICER CELLI: That would be a good idea.
9 Certainly that would be between the staff and the Native
10 Americans. And usually they're with a non-disclosure
11 agreement. Perhaps there would be a, you know, the other
12 side's expert, a qualified expert coming in and that would
13 be okay. So we'll look forward to seeing that. Do you have
14 some sense of by when you would have that motion filed?

15 MR. HARRIS: Yes, very soon. But we have to make
16 a decision on this, I think probably by the end of the
17 month.

18 HEARING OFFICER CELLI: Okay.

19 MR. HARRIS: I'd like to give you a "no later
20 than" date but believe me, there's a lot of discussion about
21 these issues. Today's discussion is helpful. We'll take a
22 look at what was docketed today. I'm not sure letting our
23 expert see it alone solves the problem but, again, I'll
24 brief those issues. I think it's really a question of what
25 the public is entitled to see as much as anything else.

1 HEARING OFFICER CELLI: That's a good point. You
2 know what I'd like to do? This is all leading to a
3 discussion of our schedule. But I want to hear from the
4 other parties first and then I want to sort of roll up our
5 sleeves and talk schedule. So let's just hold that.

6 The next person, Jon Zellhoefer, are you on the
7 phone today? Mr. Zellhoefer, did you call in?

8 (No response.)

9 HEARING OFFICER CELLI: Okay, let's hear from
10 Ileene Anderson on any of these matters and scheduling
11 especially.

12 MS. ANDERSON: Great. Yes. I have a couple of
13 comments and it's primarily on scheduling because as you all
14 know I am not an attorney so I can't weigh in on any legal
15 issues for sure.

16 I was going to discuss the issue about having the
17 Final Staff Assessment just nine working days after the flux
18 workshop that's coming up. And so we see great value in
19 postponing the FSA so that it does or can incorporate an
20 analysis stemming from that workshop, which we are certainly
21 looking forward to. So with that regard we would be fine
22 with extending the Final Staff Assessment until October
23 19th. I think that's when the applicant has suggested and
24 that would be fine with us.

25 The other thing I actually had a question about is

1 I was in the -- adjacent to the project site on July the
2 23rd after a thunderstorm and happened to be able to
3 document a huge flood. Tecopa Road was completely flooded
4 out and there was sheet flow flowing across the project
5 site. I took a video of that but what I am not clear about
6 is how I would docket that. Do I just submit it by DVD?
7 Because obviously that's too large for email.

8 HEARING OFFICER CELLI: I think a DVD is the way
9 to go. What you'd need to do is you have to label it.
10 You'd have to have, you know, Hidden Hills HHSEGS; you'd
11 have to have the case number on it, on the disc itself.

12 MS. ANDERSON: Okay.

13 HEARING OFFICER CELLI: And Jennifer Jennings has
14 some thoughts on this; why don't you come on up. This is
15 our Public Adviser Jennifer Jennings, go ahead.

16 MS. JENNINGS: She can just send it. Just send it
17 in, Ileene. Send in the disc and it will be docketed that
18 way.

19 HEARING OFFICER CELLI: Did you hear that?

20 MS. ANDERSON: Okay, great.

21 HEARING OFFICER CELLI: Great, thank you.

22 MS. ANDERSON: And I'll serve the parties as well.

23 MS. JENNINGS: Yes, yes.

24 HEARING OFFICER CELLI: Correct.

25 MS. ANDERSON: And I think that is the extent of

1 my comments at this point.

2 HEARING OFFICER CELLI: Well thank you very much.

3 I just want to make sure that the disc is clearly labeled
4 so we know what it is, you know. You would say --

5 MS. ANDERSON: I will --

6 HEARING OFFICER CELLI: -- flooding of July 23rd
7 flood of site or something like that.

8 MS. ANDERSON: I will make it as descriptive as
9 possible and put all of the identifying information on the
10 disc itself.

11 HEARING OFFICER CELLI: Great, thank you very
12 much.

13 MS. ANDERSON: Thank you.

14 HEARING OFFICER CELLI: Next we'll go to -- now
15 Scott Smith, you're standing in for Jack Prichett, right?

16 MR. SMITH: I'm standing in for Jack, yes I am,
17 and I have no comments at this time.

18 HEARING OFFICER CELLI: I would like to ask you
19 about this extension of time for the FSA, the Final Staff
20 Assessment. Do you have any objection to that or do you
21 think it's a good idea or what?

22 MR. SMITH: We have no objections to it.

23 HEARING OFFICER CELLI: Okay, very good. Thank
24 you very much, thanks for participating.

25 MR. SMITH: You're welcome.

1 HEARING OFFICER CELLI: Stay here with us, we're
2 going to continue on.

3 MR. SMITH: I'm here.

4 HEARING OFFICER CELLI: Okay, great. Cindy
5 MacDonald.

6 MS. MacDONALD: Hi. Okay, with respect to the
7 applicant's motion to extend the FSA. I'm supportive of
8 that extension; there's a lot of information that I would
9 still like to see.

10 One of the questions I wanted to ask kind of about
11 the status was the well pump test because I know there's
12 been a lot of activity the last couple of days on Well 3.
13 And I -- we hadn't been clear yet on whether they were going
14 to perform that or not. Obviously if they perform it,
15 extended time would give us more time to actually review
16 those results. So before going any further I kind of wanted
17 to ask Mr. Harris what is the status of the well pump test
18 issue?

19 HEARING OFFICER CELLI: Thanks, let me ask that.
20 Mr. Harris, please.

21 MR. JENSEN: This is Clay Jensen.

22 HEARING OFFICER CELLI: Mr. Jensen.

23 MR. JENSEN: I'll handle this one. We have in
24 fact began to move forward on what we're calling Aquifer
25 Performance Test number 2 and we provided a draft copy of

1 that plan for staff's courtesy review of that document. We
2 are, in fact, on-site drilling an additional pump well.
3 It's been permitted by Inyo County and moving forward with
4 getting additional data to support and hopefully answer some
5 of the questions that have been raised throughout the
6 process.

7 We expect that -- the actual flow test to begin
8 next week. We do, in fact, have 24/7 security on-site
9 watching it at all times to make sure we don't have a repeat
10 of the previous incident. We expect to have those early
11 results in approximately three weeks and at that time we
12 plan to provide that information to the Commission staff.
13 To confirm, that would be additional information that could
14 be provided that would further substantiate or provide
15 justification for pushing to the October FSA date.

16 HEARING OFFICER CELLI: Three weeks from now is
17 September. The first week, second week of September the
18 results would be off?

19 MR. JENSEN: Correct.

20 HEARING OFFICER CELLI: And available to the
21 parties?

22 MR. JENSEN: Yeah, yeah. There's some ambiguity
23 there or some flexibility in that the actual pump test
24 program as we've described in some of our earlier status
25 conferences -- sorry, in some of the workshops.

1 The duration of that test largely depends on how,
2 how the aquifer performs and how quickly it hits quote/
3 unquote "steady state." So if there's been multiple days of
4 pumping and there's not a change in the monitoring regime
5 then you stop that test, no need to continue. So we have it
6 set up now with some flexibility on how long that goes to
7 make sure that we achieve a steady condition.

8 So if things go as we expect them to, three weeks
9 is, is -- around the time that we'll have at least a draft
10 briefing packet. The full document report to describe the
11 process in its entirety with the supporting exhibits and
12 appendices, that's likely to be an additional week beyond
13 that. So about four weeks from now we'd have the complete
14 document. But to provide some initial feedback that could
15 help feed into an FSA would be about three weeks.

16 HEARING OFFICER CELLI: Excellent, thank you.
17 Ms. MacDonald, did you get that?

18 MS. MacDONALD: Yes I did and thank you. A couple
19 of questions or I guess comments, one or the other, about
20 that. So they're drilling another monitoring well now. He
21 said the actual pump test will not start until next week.
22 And the three weeks -- within about three weeks from there
23 that we could expect preliminary results.

24 Now one of the questions that I had was in the
25 original well pump test CEC staff had laid out three

1 separate conditions to provide some flexibility, as he was
2 saying. The first was at minimum the test had to be seven
3 days. The second was if things had not stabilized it had to
4 go to 14 days or until things stabilized. So my
5 understanding was that was the conditions placed by staff
6 the first time. Are there similar conditions on this one?
7 That would be the next question that I have.

8 HEARING OFFICER CELLI: You know, that is sort of
9 a workshop kind of question, really.

10 MS. MacDONALD: Okay.

11 HEARING OFFICER CELLI: I just want to --

12 MS. MacDONALD: Well I was trying to get a sense
13 of time frame. Because if the well pump test doesn't start
14 until next week it's going to take at least a minimum of
15 seven days from there. Then another three weeks before the
16 preliminary results and then another week or two for the
17 final results. That was the goal of why I was asking that
18 question.

19 HEARING OFFICER CELLI: I get that. Your question
20 is a good one and it's information I'm sure you want to
21 know, it's just it's a little too factual for us at a status
22 conference. But what I'm thinking is you are going to have
23 a workshop on the 28th of this month and you'll be able to
24 -- I'm getting an indication from staff, go ahead.

25 MS. WILLIS: I'm sorry to interrupt. The workshop

1 on the 28th is a joint workshop with the Rio Mesa team on
2 solar flux. So we would need to schedule an additional
3 workshop to discuss all the other issues probably sometime
4 at the beginning of September if the date -- if the date for
5 the FSA is moved to October.

6 HEARING OFFICER CELLI: Okay, that's fine. And
7 that may or may not -- I don't know if you are going to have
8 more workshops or not after that. But in any event the
9 point is, this data is going to be completed in plenty of
10 time to make the FSA and to be analyzed by staff, right?

11 MS. MacDONALD: On the -- on the 11th or the 19th?

12 HEARING OFFICER CELLI: This would be the October
13 date we're talking about now, which is October -- oh, I had
14 written that down. The 19th, is it? Yes, October 19th,
15 Ms. MacDonald.

16 MS. MacDONALD: Okay.

17 HEARING OFFICER CELLI: The reason I'm saying that
18 is because you are going to have an opportunity to comment
19 on the FSA as well.

20 MS. MacDONALD: Right, I do understand that. I
21 just was -- I was just trying to figure out if the well pump
22 test information data was going to be incorporated in the
23 FSA or not. And that would depend on, you know, due to the
24 timing of it, if we were doing September 11th or October
25 19th. So that's the only purpose why I brought that up.

1 HEARING OFFICER CELLI: Oh, very clear.

2 MS. MacDONALD: With respect to -- pardon me?

3 MR. HARRIS: If I could -- I just want to remind
4 folks that the additional well pump test is not a legal
5 requirement, it is not a regulatory requirement, it's
6 something the applicant has offered to do. We think it's
7 good and hopefully it's going to convince staff that our
8 prior tests were accurate. So I don't want anybody -- I
9 think we need to workshop the issue at all.

10 HEARING OFFICER CELLI: No, I wasn't suggesting
11 that. But mostly what my concern was -- her concern
12 obviously was is she going to get an opportunity to really
13 look at and get into the information. And with the extended
14 time now of the FSA it sounds to me like she will.

15 And so -- Ms. Allen, you had a question?

16 MS. ALLEN: This is Eileen Allen. Mr. Jensen,
17 this is a lay-person's question. If there were to be
18 another flash flood event would that have any effect on the
19 well test schedule?

20 MR. JENSEN: That's a complicated question to
21 answer but we don't expect that it would. The event that
22 was being referenced today that the video will be submitted,
23 we have an on-site met station, we track weather data, it's
24 obviously very important for our business unit, and that was
25 a fairly significant event. Now we don't know exactly where

1 it fits in the scale of things. And frankly, from the
2 logging that we did on-site, it was typical of a desert
3 storm event. And of what significance, we're not sure. And
4 Tecopa Road did experience some significant water that,
5 frankly, was matching what our analysis showed would occur
6 during that event.

7 At the particular location where the well drilling
8 is going at Well 3 and what we are calling now Well 3-B,
9 which is the new monitoring well, it's 100 feet off of the
10 Tecopa Road roadway. Likely it would not cause a
11 significant issue if we had a similar sized event.
12 Obviously if we had a larger size event then without any
13 drainage facilities in place or some of the protective
14 measures that might be put there could be some impact on
15 schedule but it's not expected.

16 MS. ALLEN: Thank you.

17 HEARING OFFICER CELLI: So I want to go back to
18 Ms. MacDonald because this is your -- you have the floor,
19 Ms. MacDonald. So did we resolve that question regarding
20 the pump test and the timing?

21 MS. MacDONALD: Not really. And because it's
22 related to the FSA. But it sounds to me like through the
23 discussions the FSA is being moved to October. So I wasn't
24 that clear until this conversation that that's kind of where
25 we were leaning.

1 I guess the only other question I might have is
2 maybe to staff as to whether they would find it -- the well
3 pump test data to be pertinent in their development of the
4 FSA or not? That would be the only remaining question in
5 terms of time table between September and October.

6 And then from there obviously I have a few
7 comments with respect to the draft schedule. I thought that
8 most of the stuff is spaced just one week apart. Given the
9 -- I am not familiar with if that's normal or not but it
10 seemed incredibly fast-paced to me. Especially considering,
11 you know --

12 HEARING OFFICER CELLI: It is actually --

13 MS. MacDONALD: Pardon me.

14 HEARING OFFICER CELLI: This is very normal. This
15 was a little fast-paced because when we first put this
16 together the idea was to try to get a decision. The
17 applicant had indicated they needed one before 2013 began.
18 Now we are going into the first quarter somewhere of 2013.

19 But this -- the way that -- I don't know if you're
20 -- are you looking at a computer, Ms. MacDonald?

21 MS. MacDONALD: Yes, I've looked at your draft
22 proposed schedule.

23 HEARING OFFICER CELLI: Okay. So really when
24 applicant files testimony -- applicant's testimony is pretty
25 much usually the AFC and subsequent data responses and other

1 declarations.

2 The intervenors file their testimony which, you
3 know, isn't something typically you start doing after, you
4 know, this is something you've been garnering all along. So
5 the intervenors file their testimony four weeks after the
6 FSA.

7 The last day to file a petition, five weeks from
8 the FSA.

9 Rebuttal testimony. Rebuttal testimony is your
10 testimony that you are going to file that rebuts testimony
11 that was already filed by other parties.

12 This is very normal the way we do it. It's
13 actually standard.

14 MS. MacDONALD: Seven days apart?

15 HEARING OFFICER CELLI: Yes.

16 MS. MacDONALD: Okay. With respect to the
17 response to the FSA, the three weeks, considering if the FSA
18 is anywhere close to the size of the PSA. When the PSA was
19 published we had a status conference ten days after,
20 approximately, and at that time nobody had said that they
21 even finished reading the PSA.

22 And so, you know, with three weeks. If the FSA is
23 the same size or even larger, three weeks is for the
24 applicant, obviously. I thought that was a little short and
25 would like to see at the very least a little time extended,

1 especially since so much additional time is being granted to
2 staff to make sure that they get their stuff right.

3 So I would like more, a little bit more of an
4 opportunity, at least I would, to be able to review what
5 staff wrote, what staff changed in it prior -- because
6 between reading it and then having to prepare testimony
7 based on it, you know, those are two pretty big jobs as this
8 PSA stands or FSA if it's similar. So I guess that's what I
9 would like to state is at the very least I would like to see
10 a little bit more time put between the FSA publication and
11 the testimony.

12 HEARING OFFICER CELLI: So you mean intervenors'
13 testimony.

14 MS. MacDONALD: Well, I guess that's the only one
15 I could speak for, the applicants obviously can speak for
16 themselves, but yes.

17 HEARING OFFICER CELLI: Okay. Anything further on
18 scheduling?

19 MS. MacDONALD: No, I think that's it, thank you
20 for asking.

21 HEARING OFFICER CELLI: Thank you and thank you
22 for your comments.

23 I just want to say on behalf of the Committee that
24 what has happened so many times in the past things lag of
25 necessity. There's things that are unforeseeable that are

1 going to come up. And then it seems to always come out of
2 the Committee's hide to have to write the PMPD like
3 yesterday and I just don't think that that serves anybody.
4 And so we need to -- I just want to make sure that there's
5 enough time built into the whole schedule so this is
6 reasonable.

7 Having said that, the new -- okay. I just want to
8 look at our current schedule because really this is the
9 skeleton we are going to be working off. These are the
10 events.

11 The briefing from applicant -- then if the FSA
12 isn't going to come off, isn't going to publish until
13 October then there's plenty of time between now and then to
14 brief these issues. Give the parties a chance to respond,
15 rebut and actually if need be have a hearing.

16 Now there may or may not be the necessity for a
17 hearing. If the briefs are thorough enough the Committee
18 would be able to just issue an order right off the briefs
19 and that would probably be the best way to go, if it really
20 is a factual -- I'm sorry, a legal-only question then
21 there's no need to hear you say orally what you have already
22 said in paper. So that would probably be the best way to go
23 is just briefs.

24 Do you think you could get your briefs out in the
25 next, say, two weeks, Mr. Harris?

1 MR. HARRIS: Yeah, I think -- we were targeting
2 internally the end of the month and have every incentive to
3 better that date, obviously, so no later than 8/31. I like
4 your formulation of days after because if we get it in a
5 week early then you can, you don't have to wait an extra
6 week.

7 HEARING OFFICER CELLI: All right. So if you are,
8 if you get your motion out, staff, what do you need, one
9 week, two weeks?

10 MS. WILLIS: I guess it depends on the timing at
11 this point. If it came at the end of the month I would
12 imagine two weeks would be appropriate.

13 HEARING OFFICER CELLI: Okay. So that would take
14 us to the middle of September sometime. Let's say the week
15 of the 14th or 15th of September. Oh, wait a minute, is
16 that September or November? I'm looking at a calendar,
17 folks, which is -- I'm not just talking to myself. Okay, so
18 mid-September; let's say sometime around 9/15. If it came
19 off on 8/31 then by 9/15 responses. How about one more week
20 after that would take us to about 9/21 for rebuttal and then
21 decision within -- I think the regs give us 30 days to make
22 a decision. We would do it as quickly as we could but
23 basically we'd turn it around in less than 30 days.
24 Obviously the sooner the better for the parties.

25 Ms. Jennings, did you have a comment?

1 MS. JENNINGS: Yes. Just, you know, there are a
2 lot of interested parties other than the applicant and staff
3 here. I'm not sure that -- we don't know really what the
4 scope of the motion is going to be. But if the Committee is
5 going to make a decision on Alternatives Analysis, Cultural
6 Resources confidentiality, I expect others will want to get
7 involved.

8 HEARING OFFICER CELLI: Right, but it's limited to
9 the parties. So basically --

10 MS. JENNINGS: Yes I understand that.

11 HEARING OFFICER CELLI: Okay.

12 MS. JENNINGS: But I think that you may have
13 additional parties by then as well. And Ms. MacDonald I'm
14 sure will want to weigh in on Alternatives and on the
15 Cultural. So I think you need to have the schedule reflect
16 that you will have non-companies participate in this process
17 and give them additional time.

18 HEARING OFFICER CELLI: Well.

19 MS. JENNINGS: And I also wanted to state that I
20 agree with Ms. MacDonald on the issue of the testimony from
21 the intervenors should be later than four weeks after FSA
22 is, is published.

23 HEARING OFFICER CELLI: Thank you, the Committee
24 will look into that.

25 MS. ANDERSON: This is Ileene and I know the

1 Center is very interested in participating in the
2 Alternatives briefing.

3 HEARING OFFICER CELLI: Certainly, everyone is
4 going to be. The reason I was just asking staff was I
5 wanted to get a sense since staff, this isn't the only case
6 that they've got. I wanted to ask a busy party what they
7 thought a reasonable turnaround time would be and kind of
8 use that as a gauge. I think two weeks should be plenty of
9 time for all of the parties to be able to respond to the, to
10 the motion. So Ms. MacDonald, the Old Spanish Trail
11 Association, Mr. Zellhoefer and CBD, which is right now the
12 sum total of our intervenors, will all have an opportunity
13 to weigh in. In fact we're looking and we're expecting
14 briefs from all of those parties. But right now I'm just
15 sort of doing a back of the envelope calculation of what the
16 timing would be like.

17 MR. HARRIS: Mr. Celli.

18 MS. JENNINGS: Excuse me but I -- Jennifer
19 Jennings again. I have to disagree with that. I mean,
20 staff lives these issues, Alternatives Analysis, looking at
21 many projects, so they have a deeper background than you can
22 expect other parties to have so I do think that the other
23 parties deserve more time.

24 MR. HARRIS: Mr. Celli, if I could point to the
25 regulations.

1 HEARING OFFICER CELLI: Go ahead.

2 MR. HARRIS: 1716.5 governs the dates.

3 HEARING OFFICER CELLI: Right.

4 MR. HARRIS: 1716.5 says that responses to the
5 petition shall be filed -- it's not a may -- shall be filed
6 within 15 days of the petition unless otherwise specified by
7 the Presiding Member and the decision is within 30 days. So
8 there's a very familiar process for the Commission in
9 dealing with these things.

10 HEARING OFFICER CELLI: Right. So we don't need
11 to discuss this any further other than to say that the
12 Committee, after the Committee gets the motion the Committee
13 will set dates and we will take it from there.

14 MS. JENNINGS: Yes. Mr. Harris lowered his voice
15 when it said "unless otherwise specified by the Presiding
16 Member." So the Presiding Member can extend the deadline.

17 PRESIDING MEMBER DOUGLAS: We understand that we
18 have the discretion to set the schedule.

19 HEARING OFFICER CELLI: Yes.

20 PRESIDING MEMBER DOUGLAS: We will set the
21 schedule when we get the motion. We've talked bout two
22 weeks. I'd like the parties to think about two weeks as
23 your general expectation unless the motion is different than
24 what we expect to see.

25 HEARING OFFICER CELLI: But we are not talking

1 about the schedule per se, what we are talking about is
2 these pre-FSA motions that the applicant is going to bring
3 on these legal issues.

4 ASSOCIATE MEMBER PETERMAN: And I'll also just add
5 a note. We had a number of comments, this is Commissioner
6 Peterman, on the PSA. If there are other parties that will
7 be intervening, you know, the sooner they are able to
8 intervene the better. But I am sensitive to the issue of
9 making sure everyone does have enough time. I do appreciate
10 the comment about the different level of preparation and
11 expertise, particularly for the Alternatives section. I
12 will be considering in my thinking on the scheduling.

13 HEARING OFFICER CELLI: Right. Our regulations
14 are clear that when you come in you take the case as you
15 find it. If you're a new intervenor you don't get new
16 discovery, you don't get to -- we don't get to turn back the
17 clock and afford you some sort of additional time or
18 additional privileges that the other parties don't have.
19 And so, Ms. Jennings, as new people are going to intervene
20 we encourage you to encourage them to intervene sooner not
21 later.

22 MS. JENNINGS: I understand that. I wasn't asking
23 for something specific to the new intervenors, I was asking
24 for a fair process for all the intervenors.

25 HEARING OFFICER CELLI: Certainly and that's our

1 intent.

2 And I don't know if the County of Inyo is going to
3 intervene or not. I suppose we can hear about that. But if
4 you are going to we would recommend you do it sooner not
5 later so that we know who the parties are and what we're
6 dealing with.

7 MS. MacDONALD: This is Cindy MacDonald, I'm --
8 I'm sorry, this is Cindy MacDonald. I'm kind of confused
9 what's going on here. I thought we were discussing a
10 schedule with the FSA, the testimony, prehearing,
11 evidentiary hearings, et cetera, and somewhere there's all
12 this conversation about a motion.

13 HEARING OFFICER CELLI: Yes, we went off --

14 MS. MacDONALD: It seems to me --

15 HEARING OFFICER CELLI: I'm sorry, I didn't mean
16 to cut you off; go ahead.

17 MS. MacDONALD: Well, I think you kind of are
18 getting -- I have no idea what we're talking about with this
19 motion but I heard comments like not having a hearing,
20 filing briefs. The schedule I'm looking at, briefs are
21 filed like three months after the FSA. So can you clarify
22 what exactly we're talking about, please.

23 HEARING OFFICER CELLI: Yes. Let me make that
24 very clear and thanks for pointing that out.

25 The applicant has indicated that they wanted to

1 bring what they called a limited motion to discuss issues of
2 a legal nature; to bring a motion so that the Committee can
3 resolve issues of a legal nature. And this is, this is all
4 separate from the scheduling discussions we're having,
5 Ms. MacDonald. So what I put up there is a schedule for how
6 we should proceed to hearings and beyond to decision. But
7 now they are asking for a motion, which is something outside
8 of that schedule.

9 MS. MacDONALD: Okay.

10 HEARING OFFICER CELLI: And it will affect the
11 schedule. And how it will affect the schedule and how it
12 will affect you is that depending on decisions made by the
13 Committee it will affect what evidence comes in later. It
14 may very well affect it, I don't know, we haven't got the
15 motion yet. But when we do it will probably affect the way
16 the rest of the matter proceeds. So this is a separate
17 thing that we're talking about that isn't on the schedule
18 and I hope that I just made that clear.

19 MS. MacDONALD: Yes you did, thank you.

20 HEARING OFFICER CELLI: Okay. One moment.

21 So when the schedule comes out is the -- this
22 schedule that you're looking at is going to be part of what
23 will be our Notice of Evidentiary Hearing and Prehearing
24 Conference. So we will send out a Notice of Prehearing
25 Conference. Included in that notice is an explanation of

1 what the parties need to do, what evidence, lists of
2 witnesses and things like that, and this schedule will be
3 part of that. So right now we're just formulating it, we're
4 in the formulation stage, as it were. And I wanted to
5 discuss it today and I really appreciate everybody's
6 comments on that because what I'd like to do is finalize
7 this as soon as I can.

8 I think that barring some unforeseen circumstance,
9 and Ms. MacDonald, as you now have seen, unforeseen
10 circumstances are foreseeable. They happen. It seems that
11 every time we have a schedule it seems to keep getting
12 knocked out. I don't know what it is, there's a poltergeist
13 or something, but no one can keep a schedule. And for who
14 knows, any number of reasons, they keep elongating. So this
15 is one of those examples where it happened.

16 And that's why I can say, speaking for myself not
17 the Committee, I personally am always reluctant to put out a
18 schedule until I have an FSA in my hot little hand. Because
19 then I know, okay, good, we've got an FSA, let's move. And
20 so for me to put out a schedule prior to the FSA publishing
21 is always risky business.

22 So right now I think it's good for especially the
23 intervenors and people who aren't very familiar with our
24 process, to see what the events are and where we're going
25 and what we're going to -- what the flow looks like. So at

1 least that much information you have in your hand. We will
2 put out the actual schedule as we get nearer to an FSA.

3 So with that we're waiting on a motion. Two weeks
4 later -- everything will proceed pursuant to 1716.5 of our
5 regs, which basically say that the parties get 15 days after
6 the motion to respond. We give the applicant a week to
7 rebut because the applicant has the burden of proof, and
8 then we would issue a decision as quickly as we can. Really
9 that's the Commission's -- this Committee's commitment is to
10 get things out quickly.

11 So having had that discussion and now having a
12 sense of where we're going was there anything from the
13 County of Inyo, Ms. Crom?

14 MS. CROM: Just a few points and a couple of
15 updates. One is we did receive a General Plan application
16 as referenced in our comments in July. There will be a
17 General Plan public meeting in Tecopa on the 29th of August.

18 There were a couple of issues concerning conformance with
19 Title 18 of the Inyo County Code, which we have addressed
20 with the applicant and we believe will be remedied by the
21 end of this week.

22 There is not, at this time, a request for either
23 merger or reversion to acreage.

24 There are some legal disputes between the
25 applicant and the county with respect to public roads

1 existing on the facility and at this time there is not a
2 road abandonment application.

3 There was comments about a point-of-sale agreement
4 between the county and the applicant and I will indicate
5 that at this time there has not been any negotiations nor
6 proposed agreement forwarded to the County.

7 There has been a request by both Ms. MacDonald and
8 staff concerning flooding issues. I will just indicate that
9 I have -- our staff is working on gathering that. It is,
10 unfortunately, not information that we maintain in some sort
11 of database that we can just pick a -- push a button and
12 get. It's actually maintained by the foremen that work out
13 in that area and they're looking at their daily logs right
14 now to gather that information to provide it. And yes, we
15 did have a flash flooding incident in July that we are aware
16 of. Let's see.

17 With respect to scheduling, we do not object to
18 the proposed schedule, the October deadline. Where that
19 pushes this out I am not exactly sure but obviously that
20 will allow us more time for the processing of the General
21 Plan Amendment and the request for zoning reclassification.

22 We have commenced the process with consultation
23 with the local tribes as is required by the Government Code
24 and we have had one tribe that has requested information and
25 I think will request formal consultation.

1 As for intervention, we do not have a position at
2 this time; it is something that we are evaluating.
3 Obviously we'll have to wait until either we receive the FSA
4 or possibly the motions may accelerate that decision and
5 that's something that the Board will have to decide. So
6 thank you.

7 HEARING OFFICER CELLI: Thank you. As the parties
8 can see, intervention, it's going to be a fixed amount of
9 time. We're coming down towards the point at which we are
10 going to cut off intervention. It's usually 30 days before
11 the prehearing conference notice goes out. Anyway, it's not
12 an infinite possibility to intervene in this matter and
13 people who are considering it should get on the stick.

14 With that, if there is anything further from
15 applicant or staff? Because if not we're going to go to
16 public comment.

17 MS. WILLIS: Nothing further from staff.

18 HEARING OFFICER CELLI: Thank you, Ms. Willis.

19 MR. HARRIS: Surprisingly, nothing further.

20 HEARING OFFICER CELLI: Thank you, Mr. Harris.

21 Anything further from -- Jon Zellhoefer, are you
22 on the phone?

23 (No response.)

24 HEARING OFFICER CELLI: Okay. Ileene Anderson,
25 anything further before we go to public comment?

1 MS. ANDERSON: Nothing further at this time,
2 thanks.

3 HEARING OFFICER CELLI: Thank you. Mr. Scott
4 Smith on behalf of the Old Spanish Trail Association,
5 anything further before we go to public comment?

6 MR. SMITH: Nothing further at this point.

7 HEARING OFFICER CELLI: Thank you. Ms. MacDonald,
8 anything further before we go to public comment?

9 MS. MacDONALD: No, thank you.

10 HEARING OFFICER CELLI: Thank you. Then at this
11 time we are going to take public comment.

12 I am looking around the room, is there any member
13 of the public, Ms. Jennings, who is in the room who wishes
14 to make a comment?

15 MS. JENNINGS: (Shook head.)

16 HEARING OFFICER CELLI: She's shaking her head no.

17 Let's go to the phone. First the way I'm going to
18 handle the phone is I have those people who actually typed
19 their names in on their computers and then I have people who
20 called in who are unidentified. So first I am just going to
21 go through the people whose names we have. Chris Huntley is
22 with staff. Christina Snow is with staff. I have Jane.
23 Jane, did you wish to make a public comment?

24 (No response.)

25 HEARING OFFICER CELLI: Jane no last name. Okay.

1 And some people are just listening in on their computers
2 without a microphone.

3 I have Jeanine Hinde, she's with staff. Jim
4 Stroh? Jim Stroh, are you out there?

5 MR. STROH: No comment, thank you.

6 HEARING OFFICER CELLI: Thank you, thanks for
7 listening. I have J. Leyva, is with staff. I have Marylow
8 Taylor, is with staff. Scott Smith. That is pretty much
9 everyone I have.

10 Somebody who called in as Call In User #5. If you
11 are on the phone and wish to make a public comment please
12 speak up now.

13 (No response.)

14 HEARING OFFICER CELLI: If you're on the telephone
15 and wish to make a public comment please speak. This is
16 your opportunity to make a public comment.

17 (No response.)

18 HEARING OFFICER CELLI: Okay, it sounds like I
19 don't have any further public comment. So with that I will
20 return the podium back to Commissioner Douglas.

21 ASSOCIATE MEMBER PETERMAN: I'll just -- this is
22 Commissioner Peterman. I'll just add the final comment for
23 Mr. Harris that a flying car did demonstrate at the SoCal
24 Auto Show earlier this year. It did not go very far but
25 maybe hovering so I am optimistic about the ability for all

1 the parties and the Committee to resolve some of these
2 issues.

3 (Laughter.)

4 PRESIDING MEMBER DOUGLAS: You know, speaking of
5 flying cars, Commissioner Peterman. I read an article in
6 the great publication, the Davis Enterprise, about an
7 inventor in Davis who is also working on that technology so
8 we'll look forward to seeing it hit prime time very soon.

9 (Laughter.)

10 PRESIDING MEMBER DOUGLAS: And on that note I'd
11 like to thank everybody for their participation today and
12 we'll look forward to continued engagement in this
13 proceeding. Thank you, we're adjourned.

14 (The Status Conference adjourned
15 at 11:33 a.m.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference and thereafter transcribed it.

I further certify that I am not of counsel or attorney for any of the parties to said conference or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of August, 2012.

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